D.B. CIVIL SPECIAL APPEAL NO.112/2006
Aameen Vs. Naresh & Anr.

Date : 17.08.2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. A.R. Nikub for the appellant.

This appeal is directed against the order of learned Single Judge rejecting the application for restoring S.B. Civil Misc. Appeal No.913/2004 which was dismissed in default on 10.12.2004.

From the record, it appears that on 5.10.2004 two weeks' time was allowed to learned counsel for the appellant, who was present in court to remove the defects. The defects were removed in time and the appeal was registered and was placed for admission on 10.12.2004. As per the affidavit of the counsel, it appears that he reached the Court after the case was called out, therefore, in his absence the appeal was dismissed in default. The restoration application submitted by the appellant along with the affidavit of

counsel himself showing reason for his absence when the case was called out has also been rejected by the order under appeal.

We find that the matter is still at a stage where no notices were issued to the respondent, therefore, notices of this appeal need not be issued.

Having considered the totality of the facts and circumstances of the case, we are of the opinion that the learned counsel in his affidavit has shown good reason for his delayed appearance and the same deserves to be accepted. In the circumstances, the appeal ought to have been restored by allowing the application for restoration of the appeal.

Accordingly, the instant appeal is allowed. The order under appeal is set aside and as a result the S.B. Civil Restoration Application No.13/2005 is also allowed as we find that the counsel has shown sufficient cause for his non-appearance when the matter was called on 10.12.2004 before the learned Single Judge

and the S.B. Civil Misc. Appeal No.1913/2004 is restored to its original number.

[GOPAL KRISHAN VYAS], J. [RAJESH BALIA], J.

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